A

WEST COAST EXPRESSWAY SDN BHD v. PENTADBIR TANAH DAERAH KLANG

HIGH COURT MALAYA, SHAH ALAM
GUNALAN MUNIANDY J
[ORIGINATING SUMMONS NO: 24NCVC-1583-12-2018]
B 25 SEPTEMBER 2019

LAND LAW: *Land acquisition – Compensation – Objection to sums awarded to landowner and tenants – Application for extension of time to file Borang N – Whether there were special circumstances warranting extension of time – Whether there was clear breach of natural justice – Whether construction of development for public purpose – Land Acquisition Act 1960, s. 38(4), (6) – Rules of Court 2012, O. 92 r. 4*

C

This was an application *vide* originating summons ('OS') by the plaintiff in two cases for extension of time ('plaintiff's application') for a land reference pursuant to s. 38(6) and/or s. 38(4) of the Land Acquisition Act 1960 ('LAA'); and O. 7 and/or O. 92 r. 4 of the Rules of Court 2012 ('ROC'). The plaintiff was awarded the concession by the Government of Malaysia and the Highway Authorities of Malaysia for the construction of the development known as the West Coast Expressway. Hence, by virtue of being awarded the concession, the plaintiff was therefore the paymaster of the entire West Coast expressway. This OS was in relation to the plaintiff's application for an extension of time to file Borang N. The application was premised on the fact that the plaintiff was objecting to the sums which were awarded by the defendant to both the landowner and tenants in relation to a compulsory acquisition by the State Authorities on behalf of the plaintiff, on a piece of land ('the acquired land'). The purpose of the compulsory acquisition was purely and solely for a public purpose and/or public interest, namely the construction of the West Coast Expressway ('the construction'). The defendant had awarded a sum of RM3,116,227 to the landowner and a sum of RM2,099,178.95 to the tenants of the buildings as compensation for the acquired land. The plaintiff actively sought further discussion on the awarded sum with the State Authorities. The plaintiff had also continuously conducted numerous meetings with the Kementerian Kerja Raya and the Land Acquisition Agency ('the relevant Divisions'). However, despite numerous meetings with the relevant Divisions, the relevant Divisions still refused to furnish any justification on how the relevant Divisions had derived the awarded sum and had also refused to revise and/or clarify as to how and why they gave separate awards to the landowner and the tenants as well of the acquired land. The abovementioned negotiations and refusal had contributed and/or caused the plaintiff not to file the statutory Form N

D E F G H I

within the prescribed time, which was the statutory form required to file for any objection. The defendant's opposition to this OS was premised, *inter alia*, on the fact that there existed no special circumstances that warranted an extension of time being granted. The issues that arose were (i) whether there was clear breach of natural justice against the plaintiff; and (ii) whether the construction was for a public purpose.

Held (allowing application):

(1) The plaintiff had correctly highlighted the fact that the defendant had never provided any explanation as to how and why they gave separate awards to both the landowner and the tenants of the acquired land. The plaintiff should be granted a right to be heard being the concessionaire and the paymaster (*audi alteram partem*). If unchecked, it would in effect mean that the defendant could award monetary compensation to any third parties that were not encompassed in the LAA. There was clearly a likelihood of breach of rules of natural justice against the plaintiff on the ground of possible bias by the defendant in awarding the compensation sum and potentially an element of bias in acting unfairly against the plaintiff by refusing to grant an opportunity to the plaintiff to be heard or to furnish an explanation that was actively sought. (paras 18 & 22)

(2) Despite repeated attempts, meetings and negotiations with the relevant Divisions, it was alleged that they still refused to acknowledge the great variation between the Government Valuation Report and the Form H. The acts of the defendant might not have been made in a *bona fide* manner and could have been tampered with elements of *mala fide*. Further, the plaintiff should have been given a right to be heard on the defendant's manner of calculating the awarded sum and an opportunity to seek a revision on the unreasonable awarded sum as opposed to the current arbitrary and unilateral manner in which the valuation was carried out. (paras 19 & 20)

(3) The defendant had contributed substantially and/or caused the late filing of the Form N within the prescribed time by his conduct in being unresponsive and not forthcoming and/or positive to the plaintiff's many efforts and attempts to resolve the dispute in the question of a fair and reasonable compensation. It was proper for the plaintiff to presently seek to be granted an opportunity to have the right to be heard and to fair treatment from a public authority exercising statutory powers. (para 26)

(4) The compulsory acquisition herein was and is, at all material times, solely and exclusively for a public purpose and/or in the public interest and for public convenience. The purpose of the construction was to contribute and benefit the public/and or community as it would grant, ease and expedite the access to the West Coast of Malaysia to the populace at large. Furthermore, the completion of the construction would also be a crucial contribution to the economic development and growth as well as generating income for the residents as more jobs would be opened. (para 28)

(5) There was a serious issue of law that had to be promptly adjudicated and resolved as it had far reaching effects considering that the acquired land had numerous parcels for the project in question and the compensation awarded was purported to be wholly unjustified and unreasonable for being far in excess of the valuation by the professional valuer. Despite the alleged inordinate delay in filing this application, the plaintiff had demonstrated sufficient grounds and unusual circumstances out of the ordinary that would constitute special circumstances for an enlargement of time to be granted within the terms of s. 38(4) of the LAA. (paras 29 & 30)

Case(s) referred to:

Damai Motor Kredit Sdn Bhd & Anor v. Kementerian Kerja Raya Malaysia [2015] 1 CLJ 44 CA ***(refd)***

Eng Mee Yong & Ors v. Letchumanan [1979] 1 LNS 18 PC ***(refd)***

Kosma Palm Oil Mill Sdn Bhd & Ors v. Koperasi Serbausaha Makmur Bhd [2003] 4 CLJ 1 FC ***(refd)***

Lim Nee Thiam & Ors v. The Collector of Land Revenue, Kuala Pilah [1985] 2 CLJ 482; [1985] CLJ (Rep) 561 HC ***(refd)***

Mahadevan v. Anandarajan & Ors [1973] 1 LNS 84 PC ***(refd)***

Malaysia Airlines System Bhd v. Wan Sa'adi Wan Mustafa [2015] 1 CLJ 295 FC ***(refd)***

Permodalan MBf Sdn Bhd v. Tan Sri Datuk Seri Hamzah Abu Samah & Ors [1988] 1 CLJ 31; [1988] 1 CLJ (Rep) 244 SC ***(refd)***

Ramasamy Amaippan v. Kwan Lee Pin; Majlis Peguam Malaysia (Intervener) [2018] 3 CLJ 336 CA ***(refd)***

Singapore Para Rubber Estate Ltd v. Pentadbir Tanah Daerah, Daerah Rembau, Negeri Sembilan [2009] 1 CLJ 13 FC ***(refd)***

Tan Bun Cheong v. Pentadbir Tanah, Pejabat Daerah Dan Tanah Bukit Mertajam, Pulau Pinang [1992] 1 LNS 85 HC ***(refd)***

The Government Of Malaysia v. Datuk Hj Kadir Mohamad Mastan & Another Case [1993] 4 CLJ 98 HC ***(refd)***

Legislation referred to:

Land Acquisition Act 1960, ss. 3(1), 38(4), (6)

Rules of Court 2012, O. 7, O. 92 r. 4

For the plaintiff - Justin Leong & Samantha Chen; M/s Lee & Koh
For the defendant - Mohd Abdul Hakim Mohd Ali; State Legal Advisor, Selangor

Reported by Suhainah Wahiduddin

JUDGMENT

Gunalan Muniandy J:

[1] This is an application *vide* originating summons ('OS') by the plaintiff in two cases for extension of time ('plaintiff's application') for a land reference pursuant to s. 38(6) and/or s. 38(4) of the Land Acquisition Act 1960 ('LAA'); and O. 7 and/or O. 92 r. 4 of the Rules of Court 2012 ('ROC').

Plaintiff's Summary Of Facts

[2] The brief facts as per the plaintiff's submission so far as relevant are as follows:

> The Plaintiff was awarded the concession by the Government of Malaysia and the Highway Authorities of Malaysia for the construction of the development known as the West Coast Expressway. The West Coast Expressway is a project undertaken by the Malaysian Government to facilitate the ease of travelling along the west coast of Malaysia. The highway will link the northern terminus of the expressway from E1 Changkat Jering Interchange on the North-South Expressway Northern Route to the Banting Interchange on Federal Route 31.
>
> The expressway will also have interchanges to ...
>
> Hence by virtue of being awarded the concession, the Plaintiff is therefore the paymaster of the entire West Coast Expressway.
>
> This OS is in relation to the Plaintiff's application for an extension of time to file Borang N. The Application is premised on the fact that the Plaintiff is objecting to the sums which were awarded by the Defendant to both the landowner and tenants in relation to a compulsory acquisition by the State Authorities on behalf of the Plaintiff, on the land held under Title. No. GRN 20089, Lot No. 10479, Mukim of Klang, District of Klang, State of Selangor Darul Ehsan ("the acquired Land').
>
> The purpose of the Compulsory Acquisition is purely and solely for a public purpose and/or public interest, namely the construction of the West Coast Expressway ('the Construction'), which connects from Banting, Selangor Darul Ehsan to Taiping, Perak Darul Ridzuan. The project had been approved by the Malaysian Government and construction had started since May 2015.

Premised on the Acquired Land's 'Carian Rasmi', the express condition stated for 'Tanaman Am' purposes. In relation to the Compulsory Acquisition exercise, the Defendant had awarded the following sum ("Awarded Sum") as compensation for the Acquired Land via Borang H dated 21.9.2017:

The Acquired Land area (Keluasan lot yang dikehendaki)	Tanah di luar rentis TNB: 3657 meter persegi (RM500.00 semeter persegi) Tanah di dalam rentis TNB: 683 meter persegi (RM150.00 meter persegi) Jumlah: 4340 meter persegi
The valuation sum (Jumlah penilaian tanah)	RM1,930,950.00
The valuation on the builidings (Jumlah penilaian atas pembinaan)	RM3,011,155.95
The valuation on the injurious affection (Jumlah penilaian atas kesan mudarat)	RM273,300.00
Valuation fees (Jumlah fi penilai)	RM16,270.50

In summary, the Defendant had awarded a sum of RM3,116,227,.00 to the landowner and a sum of RM2,099,178.95 to the tenants of the buildings as compensation for the Acquired Land.

The Plaintiff noticed that the Defendant could not have been ignorant of the fact that the use of the Acquired Land was in contravention of the category of Land use, the express condition and the restriction-in-interest.

The Plaintiff had actively sought further discussion on the Awarded Sum with the State Authorities. Furthermore, the Plaintiff had also continuously conducted numerous meetings with the 'Kementerian Kerja Raya' and the Land Acquisition Agency (collectively referred to as 'the Relevant Divisions') for the above matter.

However, despite the numerous meetings with the Relevant Divisions, the Relevant Divisions still refused to furnish any justification on how the Relevant Divisions had derived the Awarded Sum and had also refused to revise and/or clarify as to how and why did they give separate awards to the landowner and the tenants as well of the Acquired Land.

The abovementioned negotiations and refusal had contributed and/or caused the Plaintiff not to file the statutory Form N, which is the statutory Form required to file for any objection, requesting the Land Administrator to refer the objection to Court, within the prescribed time. …

The Law Applicable

[3] Basically, the law that prescribes the period within which to file the objection to the award of compensation by the Land Administrator (Form N) and provides for extension of time is s. 38 of the Land Acquisition Act ('LAA'). As regards extension of the prescribed period specifically, s. 38(4) and s. 38(6) of the Act provide that:

> Section 38
>
> ...
>
> (4) The period of six weeks prescribed by paragraph(3)(a) and the periods of six weeks and six months prescribed by paragraph(3)(b) shall not be capable of enlargement by any Court, except in such special circumstances as the Court may think fit.
>
> …
>
> (6) Where the Land Administrator has failed to make a reference to the Court within the period specified in subsection (5), the Land Administrator or any person interested may apply to the Court for an extension of the said period.

[4] The plaintiff also relied on the inherent powers of the court under O. 92 r. 4, Rules of Court 2012 ('ROC') which provides as follows:

> 4. Inherent powers of the Court (O. 92 r. 4)
>
> For the removal of doubt it is hereby declared that nothing in these Rules shall be deemed to limit or affect the inherent powers of the Court to make any order as may be necessary to prevent injustice or to prevent an abuse of the process of the Court.

[5] The application of the court's discretionary powers under s. 38(4) and (6) of the LAA was illustrated in the case of *Lim Nee Thiam & Ors v. The Collector of Land Revenue, Kuala Pilah* [1985] 2 CLJ 482; [1985] CLJ (Rep) 561 decided by the High Court whereby the court quoted a passage from the judgment of the Privy Council in *Eng Mee Yong & Ors v. V Letchumanan* [1979] 1 LNS 18.

> ... Although in the normal way it is not appropriate for a Judge to attempt to resolve conflicts of evidence on affidavit, this does not mean that he is bound to accept uncritically, as raising a dispute of fact which calls for further investigation, every statement on an affidavit however equivocal, lacking in precision, inconsistent with undisputed contemporary documents or other statements by the same deponent, or inherently improbable in itself it may be. In making such order on the application as he "may think just" the Judge is vested with a discretion which he must

A exercise judicially. It is for him to determine in the first instance whether statements contained in affidavits that are relied upon as raising a conflict of evidence upon a relevant fact have sufficient *prima facie* plausibility to merit further investigation as to their truth.

[6] As regards O. 92 r. 4, ROC the plaintiff referred to the pronouncement B of the Supreme Court in the case of *Permodalan MBf Sdn Bhd v. Tan Sri Datuk Seri Hamzah Abu Samah & Ors* [1988] 1 CLJ 31; [1988] 1 CLJ (Rep) 244; [1988] 1 MLJ 178 which states that:

> We read this to mean that the rules cannot interfere with the exercise of the inherent powers by the court so long as it deems it necessary to C prevent any injustice or any abuse of its own process ...

[7] It was accepted by both parties that settled law required that in order to have an extension of time granted for a land reference, the applicant would have to demonstrate special circumstances.

D **[8]** On the issue of what constitutes special circumstances, reference was rightly made to the landmark Federal Court case of *Kosma Palm Oil Mill Sdn Bhd & Ors v. Koperasi Serbausaha Makmur Bhd* [2003] 4 CLJ 1; [2004] 1 MLJ 257, where the judges of the court referred to the case of *The Government Of Malaysia v. Datuk Hj Kadir Mohamad Mastan & Another Case* [1993] 4 CLJ 98; [1993] 3 MLJ 514 at pp. 101-102 (CLJ); p. 521 (MLJ):

E

> An attempt was made to define special circumstances by Raja Azlan Shah (as His Majesty then was) in the case of *Leong Poh Shee v. Ng Kat Chong* [1966] 1 MLJ 86, *viz*:
>
> > Special circumstances, as the phrase implies, must be special under the circumstances as distinguished from ordinary circumstances. It F must be something exceptional in character, something that exceeds or excels in some way that which is usual or common.
>
> The definition only serves to emphasise the fact that there are myriad circumstances that could constitute special circumstances with each case depending on its own facts. I am of the opinion that the list of factors G constituting special circumstances is infinite and could grow with time. Any attempt to limit the list or close a category would be to impose a fetter on the exercise of the discretion of the court whether to grant or stay an execution; making the discretion less of a discretion. This is surely not what discretion is all about.

H **[9]** As to the court's discretionary power to grant an extension of time to file the Form N in *Singapore Para Rubber Estate Ltd v. Pentadbir Tanah Daerah, Daerah Rembau, Negeri Sembilan* [2009] 1 CLJ 13, Alauddin Mohd Sheriff CJ (M) (later PCA) remarked:

I

(3) … Any prejudice or injustice, if at all, caused to the appellant was the result of its own attitude. Had the appellant remained vigilant in making the application for the enlargement of time, it would have had the opportunity to ventilate its case before the High Court. But it chose to remain nonchalant and treated its right with apaty

[10] In the same case, Zulkefli Ahmad Makinuddin FCJ (as he then was) observed:

(1) … The true position in the present case was that the appellant had been out of time in filing its application for objection to the award within six weeks from the date of the LA's award. The appellant in fact had already failed in the first hurdle of satisfying the High Court and Court of Appeal of the justification to grant an enlargement of time to file objection proceedings under Form N.

[11] Similarly, in *Damai Motor Kredit Sdn Bhd & Anor v. Kementerian Kerja Raya Malaysia* [2015] 1 CLJ 44, the Court of Appeal made a similar pronouncement:

[25] In this regard, we make reference to the Federal Court case of *Singapore Para Rubber Estate Ltd v Pentadbir Tanah Daerah, Daerah Rembau, Negeri Sembilan* [2009] 1 CLJ 13, where the court said:

[50] In order for the appellant to succeed under s. 38(4) it had to establish that there existed special circumstances to warrant the court to exercise that discretion. The onus therefore was on the appellant.

[51] The discretion to be exercised by the court was not absolute and unqualified and had to be exercised sparingly.

[26] Likewise, in this appeal the respondent must show special circumstances and the court must exercise its discretion to enlarge the time for filing of objection sparingly.

[12] Reliance was also placed on the principle that a *bona fide* mistake or ignorance of the law on the part of the applicant is not considered as special circumstance to justify a grant of extension and that it is important to ask the question whether the delay in making the application was reasonable and justified. (See *Tan Bun Cheong v. Pentadbir Tanah, Pejabat Daerah Dan Tanah Bukit Mertajam, Pulau Pinang* [1992] 1 LNS 85].

Analysis And Finding

[13] In essence and gist, the defendant's opposition to this OS was premised on the various provisions of law and leading authorities referred to and taking into account the material facts surrounding this case, there exist no special circumstances that warrant an extension of time being granted. Hence, that

A the application for an extension of time should not be considered at all as, *inter alia*, the plaintiff as the concessionaire and financier/paymaster should have been conversant with the law applicable to land acquisitions.

[14] However, the plaintiff took a contrary position by urging that there were special circumstances by reason of the following:

B

(i) There is a clear breach of natural justice against the plaintiff; and

(ii) The construction is for a public purpose.

[15] On the issues raised by the plaintiff, the most significant is that relating to the denial of natural justice. As to the meaning of what the rules of natural justice entailed, reliance was placed on the Federal Court decision of *Malaysia Airlines System Bhd v. Wan Sa'adi Wan Mustafa* [2015] 1 CLJ 295; [2015] 1 MLJ 757 where the Federal Court had held as follows:

C

> (3) The basic rules of natural justice are generally understood to mean the right to be heard, the rule against bias and the duty to act fairly. However the scope of the 'duty to act fairly' should be considered on a case to case basis depending on the facts and circumstances governing the relationship of those involved prior to the decision being made.

D

[16] It was contended that the cardinal rules of natural justice had been infringed by the defendant in the manner of awarding the compensation because: (i) the plaintiff was not accorded the right to be heard despite being the paymaster (the *audi alteram partem* rule); (ii) the rule against bias had not been observed in the case of the plaintiff; and (iii) the defendant had not acted fairly against the plaintiff.

E

F **[17]** The importance of a reasonable opportunity to be heard being afforded to an affected party was emphasised by the Court of Appeal in *Ramasamy Amaippan v. Kwan Lee Pin; Majlis Peguam Malaysia (Intervener)* [2018] 3 CLJ 336 where the court referred to the following:

> ... In the Privy Council case of *B Surinder Singh Kanda v. The Government of the Federation of Malaya* [1962] 1 LNS 14 Lord Denning had put in a succinct description of what natural justice ought to necessarily entail, like so:

G

> > If the right to be heard is to be a real right which is worth anything, it must carry with it a right in the accused man to know the case which is made against him. He must know what evidence has been given and what statements have been made affecting him; and then he must be given a fair opportunity to correct or contradict them.

H

I

[18] In my view, the plaintiff correctly highlighted the fact that the defendant had never provided any explanation as to how and why did they give separate awards to both the landowner and the tenants of the acquired land and hence the plaintiff should be granted a right to be heard being the concessionaire and the paymaster (*audi alteram partem*). If unchecked, it would in effect mean that the defendant can award monetary compensation to any third parties that are not encompassed in the LAA.

[19] Despite repeated attempts, meetings and negotiations with the relevant Divisions, it was alleged that they still refused to acknowledge the great variation between the Government valuation report and the Form H. As such, it was correctly pointed out that the acts of the defendant might not have been made in a *bona fide* manner and could have been tampered with elements of *mala fide*.

[20] Further, that the plaintiff should have been given a right to be heard on the defendant's manner of calculating the awarded sum and an opportunity to seek for a revision on the unreasonable awarded sum as opposed to the current arbitrary and unilateral manner in which the valuation was carried out.

[21] As to the issue of bias by the defendant, the plaintiff relied on the facts relating to the acts of the defendant, that there was a possibility that there was some element of bias and/or a lackadaisical attitude as against the plaintiff. My attention was again drawn to the Court of Appeal case of *Ramasamy Amaippan v. Kwan Lee Pin; Majlis Peguam Malaysia (Intervener) (supra)* where the court further referred to an article entitled "*The Rule against Bias*" by Mathew Groves:

> ... it was observed that while the hearing rule, being the right to be heard, governs the procedural features of decision-making, the bias rule governs the attitude or the state of mind of the decision-maker. We found that observation to be an apt one. It captures in gist, what the rules of natural justice entail in practical terms, in the context of judicial and *quasi*-judicial proceedings. An astute adherence to this important concept will invariably result in impartiality, a much sought-after commodity in all forms of tribunals which decide on the rights and liabilities of litigating parties. While it is important that a tribunal must be independent, nevertheless the need to be impartial cannot be overstated enough.

[22] On the facts, there was clearly a likelihood of breach of rules of natural justice against the plaintiff on the ground of possible bias by the defendant in awarding the compensation sum and potentially an element of bias in acting unfairly against the plaintiff by refusing to grant an opportunity to the plaintiff to be heard or to furnish an explanation that was actively sought.

[23] It would appear that the defendant may have been prompted by a desire to award a generous compensation to the landowners but may have failed to strike a fair balance between the competing interests by weighing and taking into consideration as well the importance of the rules of natural justice being respected.

[24] Thirdly and finally on rules of natural justice, the plaintiff raised the issue of the defendant having failed to discharge his duty to act fairly towards the plaintiff as the paymaster.

[25] It is trite law that an administrative authority exercising decision-making powers should observe rules of natural justice and act fairly towards affected parties. [See Privy Council in *Mahadevan v. Anandarajan & Or*s [1973] 1 LNS 84; [1974] 1 MLJ 1b].

[26] The defendants' acts and non-cooperation disclosed indisputably that the plaintiff's application to seek a fair and reasonable valuation for the acquired lands was thwarted by the defendant and/or its Divisions by not acting responsibly. From the series of events culminating in the present application, it was undeniable that the defendant had contributed substantially and/or caused the late filing of the Form N within the prescribed time by his conduct in being unresponsive and not forthcoming and/or positive to the plaintiff's many efforts and attempts to resolve the dispute on the question of a fair and reasonable compensation. As such, it is proper for the plaintiff to presently seek to be granted an opportunity to have the right to be heard and to fair treatment from a public authority exercising statutory powers. The defendant's averment that the plaintiff should have the financial clout to pay the allegedly unreasonable compensation sum was, as contended, wholly devoid of any merits and has no bearing to the instant dissatisfaction of the plaintiff. It is clearly an irrelevant consideration and reflects the defendant's lack of serious consideration for fairness to the eventual paymaster.

[27] Proceeding to the next and last point as to whether the construction on the acquired/subject land is for a public purpose, s. 3(1) of the Land Acquisition is explicit that the State Authority may acquire any land which is needed:

> (a) for any public purpose;
>
> (b) by any person or corporation for any purpose which in the opinion of the State Authority is beneficial to the economic development of Malaysia or any part thereof or to the public generally or any class of the public; or
>
> (c) for the purpose of mining or for residential, agricultural, commercial, industrial or recreational purposes or any combination of such purposes.

[28] Based on the authorities referred to and the admitted and/ undisputed facts in the present instance, there can be no doubt or argument whatsoever that the compulsory acquisition herein was and is at all material times solely and exclusively for a public purpose and/or in the public interest and for public convenience. As aptly summarised in the plaintiff's submission on the purpose of the project:

> The purpose of the construction is to contribute and benefit the public and/or community as it will grant, ease and expedite the access to the West Coast of Malaysia to the populace at large. In addition, the construction of the West Coast Expressway will also substantially reduce the travelling time from the central region to the west coast.
>
> Furthermore, the completion of the Construction will also be a crucial contribution to the economic development and growth as well as generating income for the residents as more jobs will be opened.

Conclusion

[29] Based on the several issues and factors elucidated above, it is plain that there is at present a serious issue of law that has to be promptly adjudicated and resolved as it has far-reaching effects considering that the acquired land has numerous parcels for the project in question and the compensation awarded is purported to be wholly unjustified and unreasonable for being far in excess of the valuation by the professional valuer.

[30] For the foregoing reasons, I would conclude that despite the alleged inordinate delay in filing this application, the plaintiff had demonstrated sufficient grounds and unusual circumstances out of the ordinary that would constitute special circumstances for an enlargement of time to be granted within the terms of s. 38(4), LAA.

[31] In the circumstances, I granted an order in terms of prayers (1) and (2) of encl. 1 in both cases with costs of RM1,000.